



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,406	01/04/2006	David John Edkins	131279-1051	4558
60148 7590 06/07/2010				
GARDERE / JHTL				
GARDERE WYNNE SEWELL, LLP				
1601 ELM STREET				
SUITE 3000				
DALLAS, TX 75201				
EXAMINER				
NGUYEN, CHI Q				
ART UNIT		PAPER NUMBER		
3635				
MAIL DATE		DELIVERY MODE		
06/07/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/563,406

**Applicant(s)**

EDKINS, DAVID JOHN

**Examiner**

CHI Q. NGUYEN

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 March 2010.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.  
4a) Of the above claim(s) 30-42 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-13 and 17-22 is/are rejected.  
7) ☒ Claim(s) 14-16 and 23-29 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 04 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election without traverse of Species I (claims 1-29) in the reply filed on 3/5/2010 is acknowledged.

Claims 1-29 are pending and examined.

Claims 30-42 are non-elected claims and being withdrawn.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regarding claim 4, a citation "is greater than approximately 1kPa and less than approximately 4.5kPa" is indefinite and vague because the cited range is uncertainty.

Claim 5 recites the limitation "the degree" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the form" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claims 7-13 depending upon the rejected claim 6 are also rejected.

Claim 12 recites the limitation "at least the exterior side" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 6, 9, 11-13, 17 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 4,286,420 to Pharmakidis.

Claim 1:

Pharmakidis discloses in Figs. 2-6, a rain screen apparatus including: a substantially rigid air barrier 14/10 adapted for attachment to a building structure; a rain screen panel 20 adapted for attachment over the air barrier; a spacing member 22 adapted to provide a clearance space between the air barrier and the rain screen panel; and sealing means 18 (cols. 3-4, lines 66-2) adapted to provide substantial pressure equalization within the clearance space.

Claim 2:

Including an air vent 54 (Fig. 5) to atmosphere from said pressure equalized space to allow air pressure within said space to equalize with air pressure externally of said space.

Claim 3:

Wherein said apparatus is suitable for use on building frames with studs 50/52 placed at a predetermined interval such that said apparatus resists water ingress under predetermined wind pressure.

Claim 5:

Wherein said rigid air barrier 14/10 is comprised of any polymeric or cellulosic or cementitious material suitably reinforced to provide the degree of rigidity required to resist water ingress when incorporated into said rain screen apparatus and exposed to a predetermined wind pressure according to a standardized wind test (col. 3, lines 53-56).

Claim 6:

Wherein said rigid air barrier 14/10 is in the form of a panel.

Claim 9:

Wherein said air barrier panel 14/10 includes fiber cement, oriented strandboard, plywood, metal, expanded polymeric foam or a combination of these (col. 3, lines 53-61).

Claim 11:

Wherein said panel includes a sheet of polymeric or substantially water repellent cellulosic material attached to the exterior surface of the panel so as substantially to prevent water from passing therethrough (col. 3, lines 59-63).

Claim 12:

Wherein said air barrier panel 14/10 has at least the exterior side treated with a material that repels water.

Claim 13: Wherein said air barrier panel 14/10 includes a water repellent material.

Claim 17:

Wherein said rain screen panel 14/10 includes a cementitious material, oriented strand board, plywood, metal, polymeric foam or a combination of these (col. 3, lines 53-61).

Claim 22:

Wherein said rain screen panel 14/10 is formed from an exterior cladding material.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 7-8, 10 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,286,420 to Pharmakidis.

Claim 4:

Pharmakidis discloses the claimed invention as stated above but does not disclose expressly wherein said studs are placed at between approximately 400 and 610 mm center to center and said predetermined wind pressure is greater than approximately 1 kPa and less than approximately 4.5 kPa. However, this feature would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to space the studs at the desirable location for making more strength building thus preventing a strong wind pressure. Furthermore, applicant has not disclosed the criticality of this feature.

Claims 7-8 and 18-20:

Pharmakidis discloses the claimed invention as stated above but does not disclose expressly wherein said air barrier panel is between approximately 9, 2-11, 7-11, 2-15 5-7 mm thick. However, this feature would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have a sufficient thickness for the air barrier panel for its desirable application. Furthermore, applicant has not disclosed the criticality of this feature.

Claims 10 and 21:

Pharmakidis discloses the claimed invention as stated above but does not disclose expressly wherein said air barrier panel is substantially formed from fiber cement. However, this feature would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to the barrier panel is made out of fiber cement for its desirable applications. Furthermore, applicant has not disclosed the criticality of this feature.

#### ***Allowable Subject Matter***

Claims 14-16 and 23-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-13 and 17-22 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847. The examiner can normally be reached on Monday-Friday from 7:30 am-4:00 pm.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached at (571) 272-6777.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairedirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

/C. Q. N./  
Examiner, Art Unit 3635

/Richard E. Chilcot, Jr./  
Supervisory Patent Examiner, Art Unit 3635